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Special Counsel for Plaintiff Bradley D. Sharp,
Chapter 11 Trustee for Namco Capital Group,
Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

NAMCO CAPITAL GROUP, INC., a
California corporation,

Debtor.

BRADLEY D. SHARP, solely in his capacity as Chapter 11 Trustee of NAMCO CAPITAL GROUP, INC.,

Plaintiff.

VS.

MOUSA NAMVAR, *et al.*,

Defendants.

Case No. 2:11-cv-05320-GAF (CWx)

Chapter 11

Bankr. Case No. 2:08-bk-32333-BR

Bankr. Adv. No. 2:10-ap-02945-BR

**TRUSTEE'S OPPOSITION TO
MOTION IN LIMINE NO. 4 BY
DEFENDANTS LACY 20, LLC,
HOOSHANG NAMVAR,
HOMAYOUN NAMVAR, RAMIN
NAMVAR, TRIFISH, LLC,
TRIBUN, LLC, BELIEVERS,
LLC, NET, LLC, LIGHT
SOURCE MANAGEMENT, LLC,
WOODMAN PARTNERS, LLC
TO EXCLUDE EVIDENCE AND
REFERENCES TO NAMCO
CAPITAL GROUP, INC.'S
PURPORTED PAYMENT FOR A
DIAMOND RING FOR ILANA
NAMVAR [DOC. 291]**

Date: October 21, 2013
Time: 9:30 a.m.
Place: Courtroom 740
Judge: Hon. Gary A. Feess

Trial: October 29, 2013

1 **TO THE HONORABLE GARY A. FEESS, UNITED STATES DISTRICT**
 2 **JUDGE, AND TO ALL COUNSEL OF RECORD:**

3 Plaintiff Bradley D. Sharp, the chapter 11 trustee (the “Trustee”) for Namco
 4 Capital Group, Inc. (“Namco”) hereby opposes the *Motion in Limine No. 4 by*
 5 *Defendants Lacy 20, LLC, Hooshang Namvar, Homayoun Namvar, Ramin Namvar,*
 6 *Trifish, LLC, Tribun, LLC, Believers, LLC, Net, LLC, Light Source Management,*
 7 *LLC, Woodman Partners, LLC to Exclude Evidence and References to Namco Capital*
 8 *Group, Inc.’s Purported Payment for a Diamond Ring for Ilana Namvar* [Doc. No.
 9 291] and *Defendants Mousa Namvar, Magdiel, LLC, Namco 8, LLC, Wishlab 90,*
 10 *LLC, Bunherst, LLC, and DGADE of Delaware, LLC’s Joinder to Motion to Exclude*
 11 *Evidence and References to Namco Capital Group, Inc.’s Purported Payment for a*
 12 *Diamond Ring for Ilana Namvar* [Doc. No. 296] (the “Motion”).

13 **I.**

14 **INTRODUCTION**

15 The Trustee alleges that Namco was misused as a Namvar family bank. Money
 16 flowed in from community members and flowed out to family members, directly or
 17 indirectly, for personal purposes as well as business purposes. Often, Namco money
 18 was transferred to acquire and maintain real estate for entities ultimately owned by
 19 family members. Millions of dollars went out with no documentation or security
 20 beyond a ledger entry debiting a family member’s “account.” The Defendants are
 21 attempting to justify these transfers as business loans on terms that satisfied fiduciary
 22 duties to Namco between trusted persons for whom formal documents were
 23 unnecessary (although Defendants now claim the loans are unenforceable). The
 24 Trustee is entitled to introduce evidence tending to show that this proffered patina of
 25 business legitimacy is utterly false by showing that Namco money was also used for
 26 purposes that were undeniably personal, such as the purchase of a \$390,000 diamond.
 27 It is relevant because it debunks the Defendants’ denial that Namco was used as a

1 family piggybank and supports the Trustee's alter ego allegations because it tends to
 2 make more likely the Trustee's contention that the real estate transfers were made on
 3 terms that were unduly favorable to the Defendants, and because it tends to make
 4 more probable that the Namvar brothers knew that Namco funds were not being used
 5 for Namco purposes.

6 II.

7 RELEVANT FACTS

8 The facts germane to the Motion were addressed by this Court in its *Order re:*
 9 *Motion for Summary Judgment*, entered on September 6, 2013 in Case No. CV 13-
 10 04698 GAF [Doc. 14].

11 On May 30, 2007, Ezri Namvar sent a bank wire (the "Wire
 12 Transfer"), in the amount of \$390,000.00, from Namco's
 13 bank account to Julius Klein-Eliaz Diamonds, Ltd, a
 14 diamond dealer located in Ramat Gan, Israel. (Mem. at 7
 15 (citing UF ¶ 6).) The Wire Transfer was made as payment
 16 for the purchase of a 13-carat diamond (the "Diamond"). (*Id.*
 17 ¶ 7) Ezri Namvar's account at Namco was debited \$390,040,
 18 indicating that Namco's payment for the Diamond was
 19 treated as a loan from Namco to Ezri. (*Id.* ¶ 16) Ezri then
 20 gave the Diamond to his wife, the Defendant. (*Id.* ¶ 13)

21 Order at 2. In what the Court observed was "clearly self-contradictory testimony,"
 22 Ilana Namvar claimed that the the Diamond was given to her as a gift and held by her
 23 as her sole and separate property; that the Diamond was intended to be an investment
 24 ("security' for [Defendant] and [her] children"); and that she had attempted to
 25 purchase the Diamond ("I signed over a \$273,000 check that I received from one of
 26 my investments, to pay, in part, for the diamond, which was purchased for
 27 \$390,040."). Order at 4-5.

28 The Court's order denying the Defendants' various motions for summary
 29 judgment contains the following synopsis of the Trustee's allegations:

30 The Trustee maintains that Ezri, Tony, and the other Namvar
 31 Brothers—Hooshang Namvar ("Sean"), Mousa Namvar
 32 ("Mousa"), and Ramin Namvar ("Ramin")—worked as a
 33 team to "make decisions for Namco, to solicit funds from
 34 Namco's depositors, to use those funds for the Namvar

1 family's real estate projects and other activities, and to
 2 decide when (if ever) to repay those funds to Namco."
 3 (Opp. at 9 (citing AMF ¶¶ 376–381, 395–399).) The
 4 Trustee insists that "[t]he Namvar Brothers, acting as a team,
 5 structured the Namvar family's investments at issue in this
 6 Action to benefit themselves and other members of the
 7 Namvar family," and that they did so by "insert[ing] a
 8 variety of Namvar family-owned entities between
 9 themselves and Namco, in an attempt to distance themselves
 10 from Namco's misuse of 'other people's money' (i.e.,
 11 account-holders' funds)." (Id. at 11 (citing AMF ¶¶ 414–
 12 474, 484–492)) According to the Trustee, "[t]hese entities
 13 were the 'alter egos' of the Namvar Brothers: the Namvar
 14 Brothers juggled assets among themselves, their family
 15 members and the entities; the Namvar Brothers operated the
 16 entities as a team of five brothers, regardless of the 'on
 17 paper' ownership percentages or management designations;
 18 and the Namvar Brothers back-dated and created multiple
 19 versions of organizational documents for the entities to suit
 20 the Namvar Brothers' needs." (Id.)

21 *Order Denying Motions for Summary Judgment*, filed August 16, 2013 [Doc. 262], at
 22 2-3.

23 III.

24 ARGUMENT

25 Evidence pertaining to Namco's purchase of the Diamond is relevant, and its
 26 probative value is not substantially outweighed by the threat of unfair prejudice or
 27 jury confusion. Evidence is relevant under Federal Rule of Evidence 401 if it tends to
 28 make more probable a fact that is of consequence in determining the action. It is
 relevant even when it only tends to support an *inference* of a consequential fact.

29 *Rogers v. Missouri Pa. R.R.*, 352 U.S. 500, 508 n. 17, 77 S. Ct. 443 (1957). Here, the
 30 use of Namco for personal expenditures – regardless of whether a transfer is denoted
 31 by a ledger entry that purports to make it something other than a fraudulent transfer –
 32 is relevant to several issues in the case. Such evidence supports the Trustee's alter ego
 33 allegations, rebuts the Defendants' contention that Namco was simply engaged in
 34 legitimate business transactions, and supports the claims for breach of fiduciary duty
 35 and aiding and abetting breach of fiduciary duty, as Namco's use for personal
 36 purposes of family members tends to make more probable that the intra-family

1 transfers were made on non-standard terms and tends to make more probably that the
 2 Namvar brothers knew that Namco money was being used in a manner that did not
 3 meet Ezri Namvar's and Tony Namvar's fiduciary duties to Namco.

4 For example, in *Feitshans v. Kahn*, 2008 WL 344722 (S.D.N.Y. Feb. 6, 2008),
 5 the defendant sought to exclude evidence of the defendant's "alleged use of Winter
 6 Films, LLC's funds for the reinstatement of his driver's license. . ." Alter ego
 7 liability was an issue in the case. The court held: "[T]he alleged misuse of funds
 8 remains in dispute. Because evidence of such misuse is relevant to the inquiry into
 9 whether defendants used the Entities' funds for personal purposes, defendants' motion
 10 to exclude this evidence is also denied." *Id.*, at *5.

11 Furthermore, Namco's purchase of the Diamond is relevant to show a pattern of
 12 conduct of using Namco funds for personal purposes. Under Federal Rule of
 13 Evidence 404(b) ("Rule 404(b)'), evidence of "a crime, wrong or other act" may be
 14 admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity,
 15 absence of mistake, or lack of accident." In the Ninth Circuit, "[e]vidence of "other
 16 acts" is admissible under Rule 404(b) when: (1) sufficient evidence exists for the jury
 17 to find that the defendant committed the other acts; (2) the other acts are introduced to
 18 prove a material issue in the case; (3) the other acts are not too remote in time; and (4)
 19 if admitted to prove intent, the other acts are similar to the offense charged." *U.S. v.*
 20 *Murillo*, 255 F.3d 1169, 1175 (2001) (holding that "evidence of multiple prior car
 21 rentals was relevant as tending to show Murillo's knowledge that drugs were secreted
 22 in the rental car through demonstration of his modus operandi and to rebut his defense
 23 that he was driving the long distance in a short time period to pick up his
 24 mother.holding that evidence of car rental use."). Here, (1) the Court has made
 25 findings; (2) the acts prove a material issue in the case; and (3) they are not remote in
 26 time. *See also Carofino v. Forester*, 450 F.Supp.2d 257, 273 (S.D.N.Y. 2006)
 27 ("evidence that defendant made false misrepresentations to an insurance carrier

1 concerning how many times per week he saw a particular patient both immediately
 2 after and during the period when he was seeing Jonathan tends to make more probable
 3 the alleged fact that he was making the same false misrepresentations to George.”);
 4 *U.S. v. Prejean*, 429 F. Supp. 2d 782 (E.D. La. 2006) (“uncharged conduct, involving
 5 defendant’s being stopped by police for transporting 1,639 dosage units of prescription
 6 drugs was relevant in that it involved conduct within indictment period and tended
 7 to show pattern of conduct to dispense drugs outside scope of legitimate medical
 8 practice.”).

9 Finally the Court should reject the argument that the probative value is
 10 substantially outweighed by the risk of unfair prejudice. “All evidence tending to
 11 demonstrate a defendant’s liability, by its nature, will be prejudicial in some respect to
 12 the defendant; Rule 403 is designed to exclude only *unfair* prejudice. . . . [T]he
 13 prejudice is unfair only if the evidence has ‘an undue tendency to suggest decision on
 14 an improper basis.’” *Carofino v. Forester*, 450 F.Supp.2d at 273 (emphasis in original;
 15 citation omitted).

16 Here, the reason why the Defendants complain that evidence of the Diamond is
 17 prejudicial – the obviously personal nature of the Namco payment – is the very reason
 18 the probative value of the evidence is so high. It is the epitome of evidence that is
 19 prejudicial, but not unfairly prejudicial. Indeed, the Defendants themselves place such
 20 evidence at issue by contending that Namco was used for legitimate business
 21 transactions. Evidence is admissible under Rule 404(b) where it tends to “prove a fact
 22 that the defendant has placed, or conceivably will place, in issue. . . .” *United States v.*
Curtin, 489 F.3d 935, 957 (9th Cir. 2007).

25 [remainder of page left intentionally blank]

1 WHEREFORE, for all the foregoing reasons, the Trustee requests that the
2 Motion be denied.

3 Dated: September 30, 2013

4 PACHULSKI STANG ZIEHL & JONES LLP

5 By /s/ Gillian N. Brown
6 Dean A. Ziehl
7 Alan J. Kornfeld
8 Gillian N. Brown
9 Elissa A. Wagner

10 Special Counsel for Plaintiff Bradley D.
11 Sharp, Chapter 11 Trustee for Namco
12 Capital Group, Inc.

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

I, Mary de Leon, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067.

On September 30, 2013, I caused to be served the **TRUSTEE'S
OPPOSITION TO MOTION IN LIMINE NO. 4 BY DEFENDANTS LACY 20,
LLC, HOOSHANG NAMVAR, HOMA YOUN NAMVAR, RAMIN NAMVAR,
TRIFISH, LLC, TRIBUN, LLC, BELIEVERS, LLC, NET, LLC, LIGHT
SOURCE MANAGEMENT, LLC, WOODMAN PARTNERS, LLC TO
EXCLUDE EVIDENCE AND REFERENCES TO NAMCO CAPITAL GROUP,
INC.'S PURPORTED PAYMENT FOR A DIAMOND RING FOR ILANA
NAMVAR [DOC. 291]** in this action by placing a true and correct copy of said
document(s) and sent as follows:

See Attached Service List

- (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY EMAIL) I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.
- (BY NOTICE OF ELECTRONIC FILING) I caused to be served the above-described document by means of electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, for parties and/or counsel who are registered ECF Users.
- (BY HAND DELIVERY) I caused to be served the above-described document by hand delivery to the parties as indicated on the attached service.
- (BY FAX) I caused to be transmitted the above-described document by facsimile machine to the fax number(s) as shown. The transmission was reported as complete and without error. (Service by Facsimile Transmission to those parties on the attached List with fax numbers indicated.)

1 I hereby certify that I am employed in the office of a member of the Bar of this
2 Court at whose direction the service was made.

3
4 Executed on September 30, 2013, at Los Angeles, California.
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/s/ *Mary de Leon*
Mary de Leon

SERVICE LIST

2:11-cv-05320-GAF (CWx) Notice will be sent via hand delivery to:

**Judge Gary A. Feess
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